City of FRESNO **REPORT TO THE CITYCOUNCIL**

AGENDA ITEM NO.	1 J
COUNCIL MEETING	2/9/12
APPROVED BY	
DEPARTMENT DIRECTOR	
CITY MANAGER	

February 9, 2012

FROM: BRUCE A. RUDD, Assistant City Manager/ Interim PARCS Director
Parks, After School, Recreation and Community Services Department

BY: KYLE B. JEFFCOACH, Community Recreation Supervisor II
Parks, After School, Recreation and Community Services Department

SUBJECT: APPROVAL OF A THREE-YEAR AGREEMENT WITH BOYS AND GIRLS CLUB OF FRESNO COUNTY FOR LEAD AGENCY RESPONSIBILITY FOR RECREATIONAL PROGRAMMING AT FINK WHITE PARK NEIGHBORHOOD CENTER

RECOMMENDATIONS
Staff recommends that the City Council approve the attached Agreement with Boys and Girls Club of Fresno County, who has agreed to become the lead agency at the Fink White Park Neighborhood Center.

EXECUTIVE SUMMARY
The attached Agreement with the Boys and Girls Club of Fresno County would establish a three-year commitment with an option to renew for two additional years. Through this Agreement the Boys and Girls Club would become the lead agency responsible for providing recreational and other related activities at the Fink White Neighborhood Center located at 535 South Trinity. As is the case with similar agreements, the maintenance of buildings and green space will remain the responsibility of the City. Enhanced levels of maintenance requested above the Department's current levels of service will be subject to available funding.

The City will continue to pay for gas, electricity, water, sewer, and garbage; however, if the monthly gas and electricity expense at the Center exceeds 5% of the expense for the same month in the prior fiscal year. It the event that expenses exceed this amount the Boys and Girls Club has agreed to reimburse the City for the overage. The Department will also continue to explore opportunities to implement energy conservation measures at all of its facilities.

BACKGROUND
On November 18, 2010, the Fresno City Council approved a contract with the Boys and Girls Club of Fresno County to manage and operate the El Dorado Neighborhood Center. Since that time the Boys and Girls Club has demonstrated the ability to manage the facility and has exceeded the City's expectations with regard to the level and quality of programming being provided at El Dorado.

In December of 2011, the Boys and Girls Club approached the PARCS Department with a proposal to operate the Fink White Neighborhood Center as a joint venture with the City of Fresno PARCS Department. This Agreement differs from the previous agreements in that while the Boys and Girls Club would act as the lead agency, the City will augment this effort by continuing to provide the two positions already assigned to this facility. Approval of this Agreement will allow both entities to work collectively to enhance the level of recreational programs and other activities at Fink White.

The opportunity to partner with the Boys and Girls Club is due to the closing of the Sequoia Center and the ability to reallocate funds provided through a Fresno City and County Housing Authority grant to the Fink White Neighborhood Center.

As part of the Mayor Swearengin's initiative to seek community partners to assist with the operation of City owned neighborhood centers, the PARCS department has been successful in partnering with community based organizations (CBO) that have been instrumental in ensuring that the City's Neighborhood Centers remain open and that essential recreational and other related activities continue to be provided. Currently six of the 17 City owned neighborhood centers are operated by a CBO, including Pinedale, Einstein, Melody, El Dorado, Sunset and Mary Ella Brown. Council's approval of this Agreement will increase the total of seven sites operated or supported by a CBO.

FISCAL IMPACT

Approval of the attached Agreement will have no additional impact to the General Fund. Facility maintenance, utilities, and field/landscape maintenance have been budgeted at appropriate for all Neighborhood Centers. As noted above, gas & electric expenses incurred at the Centers that are more than 5% above current levels will be reimbursed to the City.

Attachments Agreement with Boys and Girls Club of Fresno County for Lead Operation of Fink White Neighborhood Center

AGREEMENT BETWEEN CITY OF FRESNO AND

BOYS AND GIRLS CLUB OF FRESNO COUNTY

FOR LEAD AGENCY OPERATION OF COMMUNITY CENTER

This Agreement is made and entered into this 9th day of February, 2012, by and between the CITY OF FRESNO, a municipal corporation ("CITY") and BOYS AND GIRLS CLUB OF FRESNO COUNTY a California nonprofit corporation ("USER").

RECITALS

A. CITY is the owner of the property located at 535 South Trinity Avenue, which encompasses approximately 8.62 acres and includes outdoor recreational spaces commonly known as Fink-White Park ("Park") and a freestanding recreational building commonly known as the Fink-White Neighborhood Center ("Center").

B. CITY's Director of Parks, After-school, Recreation and Community Services ("Director") (including Director's designated representatives) is charged with the responsibility of supervising the use of CITY's parks and recreational facilities.

C. USER is organized as a California nonprofit corporation to provide services and opportunities for all ages with an emphasis on school aged children.

D. USER has an objective of providing community services to the public.

E. CITY and USER desire to enter into an Agreement to operate the Center, pursuant to the terms hereof.

F. The right to use and operate the Center without payment of full fair market value rent conveys a valuable benefit. CITY intends to grant use of certain recreational facilities, such as the Center, to nonprofits on the condition that the USERS will provide a minimum amount of "Community Services." "Community Services" is broadly defined as including programs, services and activities that are consistent with the CITY's Parks, After-school, Recreation and Community Services Department ("PARCS") mission of creating 'community' through people, parks, and programs by enriching the lives of Fresno citizens through investment in park and open spaces for recreation, and providing diverse opportunities for human development and social interaction.

In light of the foregoing, the parties hereto do hereby agree as follows:

AGREEMENT

SECTION 1. TERM OF AGREEMENT.

This Agreement shall be for a term commencing on January 1, 2012, and expiring no later than December 31, 2015, unless sooner terminated pursuant to the provisions of this Agreement. CITY may extend this Agreement by granting up to two (2) one-year extensions to USER. This Agreement may be terminated by the CITY or USER at any time and upon ninety (90) days prior written notice to the other party, as further provided herein. Regardless of the date of execution of this Agreement, the effective date shall be January 1, 2012.

SECTION 2. CITY'S OUTSOURCING POLICY

A. The Center was constructed to provide Community Services. This Agreement grants certain use and operation of the Center without payment of facility use fees. In exchange for the authority to use and operate the Center as set forth herein, USER agrees to provide, at a minimum, the Community Services identified in this Agreement. USER acknowledges that its agreement to provide at least the minimum level of Community Services and programs to the CITY and the community is a material provision of this Agreement. USER understands that CITY is relying upon USER actually delivering the program of Community Services as contained within, and during hours of operations that are comparable to those currently operated by the CITY.

B. USER acknowledges and agrees that any religious, political, or any other activity outside the scope of services provided pursuant to this agreement is subject to a separate rental agreement to be executed by USER and PARCS.

C. Although infrequent in their occurrence, from time to time, CITY may receive requests from the public to rent the Center for an event. The CITY retains the right

to make the Center available for a reservation only after conferring with USER to ensure that Center activities are not disrupted due to scheduling conflicts or logistical obstacles. Any third party other than CITY or USER that wishes to rent the Center must do so pursuant to a rental agreement with the CITY.

SECTION 3. CONTRACT COMPLIANCE AND MONITORING.

A. USER shall be subject to the standards of performance as set forth in this Agreement. USER shall submit semi-annual reports regarding USER's performance of the Program and other requirements necessary for CITY to monitor review and evaluate the performance of the USER. USER's reports must be in a form approved by the CITY, and shall satisfy the reporting requirements set forth in Exhibit C.

B. Records, Reports and Audits of USER:
    a. Preservation of Records. USER shall preserve and make available its records:
        i. For the period of four (4) years from the date of termination or expiration of this Agreement; or
        ii. For such longer period, if any, as may be required by applicable law.
    b. Examination of Records. At any time during normal business hours, and as often as may be deemed necessary, USER agrees that the CITY, and/or any of its respective authorized representatives shall have access to and the right to examine all of USER's records with respect to all matters covered by this Agreement. USER also agrees that the CITY, or any of its authorized representatives shall have the right to audit, examine, and make excerpts or transcripts of and from such records, and to make audits of all applicable contracts and subcontracts, invoices, payrolls, records of personnel, conditions of employment, materials, and all other data relating to matters covered by this Agreement. CITY may examine records pursuant to this Section throughout the term of this Agreement and

i. For a period of four (4) years after termination or expiration of this Agreement; or,

ii. For such longer period as may be required by applicable law; or

iii. If this Agreement is completely or partially terminated, for a period of four (4) years from the date of any resulting settlement.

C. CITY Audits. The CITY may perform an independent audit. Such audits may cover programmatic as well as fiscal matters. USER will be afforded an opportunity to respond to any audit findings, and have the responses included in the final audit report. Costs of such audits will be borne by the CITY, unless the audit has been initiated by CITY in response to a default hereunder by USER, in which event USER shall be responsible for such audit cost.

SECTION 4. PROGRAM COORDINATION.

A. Prior to the Effective Date of this Agreement, and each year thereafter during the term of this Agreement, USER shall provide CITY with a draft annual program plan for CITY's approval. Upon approval of the annual program by the CITY, USER (or USER's approved subcontractors) shall offer the Community Services described in the Program to the public in accordance with the approved written plan.

B. USER shall comply with the requirement that the Center shall be made available for the PARCS Senior Hot Meals Program if applicable, and Fresno County EOC Sack Lunch program to provide no-cost snacks and/or lunch during extended school breaks, at no cost, and the USER shall cooperate with the provider of those programs.

C. USER represents that USER shall employ, at its sole cost and expense, an administrator who shall act as the director of the Program and shall have overall responsibility for the progress and execution of this Agreement, as well as supervise the operation of the Program. USER shall provide CITY with the contact information for USER's Program Director upon execution of this Agreement. Should circumstances or conditions

subsequent to the execution of this Agreement require a substitute Program Director, USER shall notify the CITY immediately of such occurrence. Any change in Program Director will be subject to approval by the CITY. USER's staff shall cooperate fully with the CITY with respect to all matters related to this Agreement.

D. USER's staff shall attend meetings as required or requested by CITY or Director, which except in cases of emergency, shall be scheduled with reasonable notice.

E. The parties agree that USER shall be solely responsible for the recruitment, training, supervision and compensation of USER's employees, including Program employees. The parties further agree that USER shall be solely responsible for the recruitment, training and supervision of volunteers to assist in the operation of Center or the Program.

F. USER may contract with third-party non-profit organizations to provide programming at the Center, however, any such contract shall be subject to advance review and approval by CITY.

SECTION 5. OPERATION OF CENTER.

A. CITY grants permission to USER to conduct the Program during the term of the Agreement, and pursuant to the terms of this Agreement. The use of the Center by USER shall not be exclusive, and CITY shall have the right at all times to enter upon the Center for any purpose and to use the same for any purpose not inconsistent with USER's obligations hereunder. USER shall not pay facility use fees to CITY for USER's Community Service Program activities which have been expressly approved by CITY, subject to the provisions of this Agreement, provided that other costs and charges as set forth herein, may apply. USER shall have access to the outdoor spaces around the Center; however, paid reservations made through the CITY for the use of the outdoor spaces shall be given first priority.

B. Minimum Hours of Operation. USER shall operate the Center at a minimum every Monday through Friday from 3:00 p.m. to 7:00 p.m. with recreational and/or enrichment activities geared toward school aged children from the surrounding neighborhoods offered during those hours. During USER's organizational furlough twelve (12) days per year, USER will not open the Center and PARCS will be responsible for its operation. Additionally, the Center will be closed five (5) days per year for staff development. All dates will be clearly posted for a minimum of two (2) weeks prior to the closure.

C. A location-specific program calendar shall be submitted to CITY on a quarterly basis and continuously posted for public display at the Center.

D. Minimum Programming Requirements. USER shall, at a minimum, provide the following:

1. Provide daily homework assistance and/or computer lab access.
2. Provide a variety of indoor recreation activities, e.g., arts and crafts, board games, table games.
3. Provide opportunities for community service activities, e.g., neighborhood clean-up, adopt-a-park, etc.
4. Coordinate diverse cultural/holiday activities, e.g., Valentine's, Easter/Spring, Cinco de Mayo, Juneteenth, Fourth of July, Halloween/Harvest, Thanksgiving and Winter Holiday neighborhood celebrations.
5. Provide access for the PARCS Senior Hot Meals Program, if applicable.
6. Continue partnership with Fresno County EOC to provide no-cost snacks and/or lunch during extended school breaks (Sack Lunch Program).

E. USER shall report any suspicious or illegal behavior or activity at the Center or surrounding grounds to appropriate authorities, including timely reporting of any graffiti or vandalism at or affecting the Center.

F. USER shall be responsible for conducting services at the Center consistent with CITY's policies and procedures for facility operation, including without limitation, nondiscrimination practices and procedures.

G. USER's operational obligations shall include reasonable staffing of the Center and running the Community Service Programs in a manner satisfactory to CITY. USER agrees that a minimum of two (2) staff members shall be on the Center premises during all hours of operation.

H. USER agrees that any and all personnel, either paid or volunteer, whom USER utilizes in conducting the Program shall be qualified to perform the duties assigned to them. USER shall provide CITY with job descriptions of all volunteer and paid positions. All Center personnel shall be neatly attired and shall conduct themselves at all times in a courteous and businesslike manner.

I. USER understands and agrees that the permission granted herein by the CITY to USER to use and occupy the center is contingent upon the Center being CITY-owned property. If, at any time during the term of this Agreement, the Center should no longer be CITY-owned property or should become unsafe or unusable for any cause or if CITY terminates for any other reason, CITY shall have no obligation to provide other facilities. USER further affirms and acknowledges that USER has no relocation rights with respect to the Center or the Program if this Agreement is terminated for any reason.

J. While it is anticipated that USER may apply for grants from various sources to assist in running USER's programs, nothing herein obligates the CITY to provide any funding to USER in the operation of any program within the Center. Furthermore, nothing herein grants USER any priority or special consideration from the CITY when the CITY is considering the distribution of grant funding to nonprofits and similar entities.

K. No fees may be charged for the Minimum Program Requirements set forth in Paragraph C of this Section. USER may charge fees for participation in approved Community Serving programming beyond the Minimum Program Requirements. For all programs for which a fee will be charged, USER must submit a detailed description of the program to the Director at least fifteen (15) days prior to the initiation of the program. CITY reserves the right to disallow any fees assessed for participation in USER programs and activities which the CITY deems to be excessive or inconsistent with the mission of the PARCS Department.

L. USER is herein authorized to retain such collected fees for USER use in meeting programming and operational expenses for Community Serving programs at the Center.

M. CITY agrees that USER may conduct community events and fundraising activities at CENTER with the prior written approval of PARCS Director, so long as activities do not adversely impact access for the general public to the Center. CITY approval may be contingent upon USER providing appropriate services needed to adequately support the event. Proceeds from fundraising activities must have a direct correlation to USER operations at the Center. USER must contact the Director prior to any outdoor event to ensure that the outdoor space is not already reserved by another group or organization. No alcoholic beverages will be allowed on premises.

SECTION 6. INVENTORY AND USE OF EQUIPMENT. CITY may agree to make available to USER, at CITY's sole discretion, certain CITY-owned equipment and furnishings for USER's use in the conduct of the Program. An inventory of such CITY-owned equipment and furnishings in the Center as of the effective date of this Agreement is included in Exhibit A. USER agrees to maintain all CITY equipment and furnishings applicable to this provision in good condition and safe working order, and to return same to CITY in the same condition as when received by USER, reasonable wear and tear excepted. The use of City equipment for other purposes outside the scope of this agreement is not permissible.

SECTION 7. UTILITIES .

A. CITY will pay for gas, electricity, water, sewer, and garbage, however, if the monthly gas and electricity expense at the Center exceeds 5.00% of the expense for the same month in the prior fiscal year, USER will be required to reimburse the City for the overage on a quarterly basis. CITY will continue to take advantage of opportunities to implement energy conservation measures at the Center as resources allow.

CITY agrees to provide outside garbage and refuse containers at the Center for the deposit of refuse collection services.

SECTION 8. MAINTENANCE AND REPAIR.

A. USER shall provide routine janitorial maintenance and repair of the Center necessary through reasonable wear and tear; which includes, at a minimum, spot vacuuming, mopping, and restroom service. Routine repairs that are the result of normal wear and tear on the facility will also be the responsibility of USER.

B. CITY shall be responsible for maintaining all landscaping at the Center and surrounding grounds.

C. USER shall make no alteration or change in any manner to the Center or the surrounding grounds, including electrical, gas or plumbing equipment or facilities. If USER desires to alter, modify, change or relocate any utility, equipment, or facilities or of any part or portion of the Center, such action shall be subject to the prior approval of CITY and the costs thereof shall be borne by USER.

D. USER has inspected the Center and agrees to use and occupy the Center in an "as-is" condition as of the date of this Agreement. Any maintenance or repairs required as a result of misuse or negligence of USER (including USER's agents, subcontractors, invitees, and employees) shall be corrected within thirty (30) days by USER. USER may

make arrangements for CITY to make necessary repairs at USER's sole cost and expense. Failure to complete said repairs within the specified time period may be grounds for termination.

E. The USER shall hold the CITY harmless against claims if the CITY determines that it must temporarily shut down the Center to perform major system repairs.

F. CITY shall be responsible for structural, equipment repair and other long term capital repairs of the Center, except to the extent such repair may be caused by the misconduct or negligent actions or omissions of USER or USER's invitees. USER shall report all necessary facility maintenance and repairs to CITY in a timely manner. CITY shall conduct preventative maintenance in a manner consistent with the majority of other similar CITY community center facilities. Enhanced maintenance requested by USER above the CITY's minimum levels of service are subject to CITY's approval.

G. No alterations or improvements, including capital improvements and installations of additional phone lines, T1 lines, electrical lines, security systems, or changing of locks and keys, shall be made to the CENTER without the CITY's prior written approval. If the CITY provides written approval, the USER shall be responsible for obtaining all CITY permits through the City of Fresno Public Works Department necessary for the construction of any alterations or improvements. USER will be responsible for meeting all permit requirements at no cost to the CITY.

SECTION 9. NO WASTE OR NUISANCE. USER shall not commit, or suffer to be committed, any waste upon the Center, or any public or private nuisance.

SECTION 10. REPORTING REQUIREMENTS. User shall be subject to the reporting requirements set forth in Exhibit C attached hereto.

SECTION 11. INDEPENDENT CONTRACTOR. The parties mutually agree that USER and its employees are and shall be at all times independent contractors and not agents or employees of the CITY, and that USER and its employees shall not be entitled to any salary, fringe benefits, pension, Workers' Compensation, sick leave, insurance, or any other benefit or right connected with employment by the CITY, or any compensation other than as prescribed herein and USER expressly waives any claim it may have to such rights.

SECTION 12. LICENSE RIGHTS/NOT A LEASE. The rights granted to USER under this Agreement are non-exclusive license rights only and in no respect shall the same constitute or be construed as an assignment of a leasehold or other interest in the property described in this Agreement.

SECTION 13. ASSIGNMENT OR SUBLEASE BY USER. This Agreement shall not be assigned by USER in whole or in part nor subleased or subcontracted in any respect without written authorization of CITY, which may be withheld in CITY's sole discretion.

SECTION 14. NONDISCRIMINATION. In the performance of this Agreement, including without limitation, the programs and services provided at the Center, USER shall not discriminate against any employee or applicant for employment because of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this Agreement.

SECTION 15. COMPLIANCE WITH LAWS/BACKGROUND CHECKS/REPORT OF CHILD ABUSE.

A. USER shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

B. USER shall be responsible for payment of all taxes, fees, contributions or charges applicable to the conduct of USER's business.

C. Without limitation of any other provision herein, if the services provided hereunder (i) involve direct contact with minors or if minors are supervised as part of the services provided hereunder, or (ii) if services provided hereunder include services in the human

services field and involve the care and security of children, the elderly, the disabled, or the mentally impaired, then USER represents and warrants to CITY that prior to services being provided hereunder by any personnel or volunteers retained by USER that the USER has or will conduct a criminal background check as provided in California Penal Code Section 11105.3, as well as an FBI criminal database background check and, has or will verify prior to services being provided that the personnel or volunteers do not have any criminal record for the offenses listed in California Penal Code Section 11105.3, which include, certain offenses related to the possession or use of controlled substances, sex offenses or any criminal offense involving violence.

D. USER shall comply with the provisions of the Child Abuse and Neglect Reporting Act, California Penal Code Section 11164 et seq.

E. USER shall request subsequent arrest service from the Department of Justice as provided under Section 11105.2 of the Penal Code.

F. No person whether paid or not paid by USER shall be permitted to provide services described in this Agreement unless, prior to commencing services hereunder, USER shall deliver a letter to CITY listing such person and certifying that the USER has conducted a proper background check on such person or persons, and each of the named persons is legally permitted to perform the services described in this Agreement. If requested by City during the term of this Agreement, USER shall provide an updated certification letter verifying that the background checks for each of the named persons is current and in compliance with this provision.

SECTION 16. WAIVER OF CLAIMS. USER, as a material part of the consideration to be rendered to CITY under this Agreement, hereby waives all claims or causes of action against the CITY, its officers or employees which USER may now or hereafter have for damages to goods, wares, merchandise or other property in, about or upon the Center or any portion of the building in which Center is located, and for injuries to persons in or about the Center, from any

cause or causes arising at any time. In particular, but not by way of limitation, USER hereby waives any and all claims or causes of action which USER may now or hereafter have against the CITY, its officers or employees: (a) for loss, injury or damage sustained by reason of any deficiency, impairment and interruption of any service or system serving Center or any portion of building in which Center is located, and (b) for any loss or damage to the property of, or injury or damage to USER, USER's officers, employees, or agents, from any cause or causes arising at any time because of USER's use or occupancy of the Center or any portion of building in which Center is located.

SECTION 17. INDEMNIFICATION AND HOLD HARMLESS.

USER shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and authorized volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY, USER or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. USER'S obligations under the preceding sentence shall apply regardless of whether CITY or any of its officers, officials, employees, agents or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of CITY or any of its officers, officials, employees, agents or authorized volunteers.

If USER should subcontract all or any portion of the work to be performed under this Agreement, USER shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

SECTION 18. INSURANCE REQUIREMENTS. Throughout the life of this Agreement, USER shall pay for and maintain in full force and effect all insurance as required in Exhibit B or as may be

authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion.

If at any time during the life of the Agreement or any extension, USER or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve USER of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

The fact that insurance is obtained by USER shall not be deemed to release or diminish the liability of USER, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by USER. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of USER, its principals, officers, agents, employees, persons under the supervision of USER, vendors, suppliers, invitees, USERs, sub-USERs, subcontractors, or anyone employed directly or indirectly by any of them.

Upon request of CITY, USER shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

If USER should subcontract all or any portion of the services to be performed under this Agreement, USER shall require each subcontractor to provide insurance protection in favor of CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with USER and CITY prior to the commencement of any services by the subcontractor.

SECTION 19. COMPLIANCE WITH LAWS. USER shall comply with CITY policies and all applicable state and federal laws, regulations and rules related to the use of the Center and the operation of the Program, including but not limited to, laws, regulations and rules applicable to health, safety and equal opportunity employment.

SECTION 20. POSSESSORY INTEREST TAX. USER understands and agrees that this Agreement may create a possessory interest subject to property taxation and that USER may be subject to payment of property taxes levied on such interest, and that any such tax shall be the liability of and be paid by USER.

SECTION 21. TIME OF ESSENCE. Where performance of a covenant is specified herein to be performed on or before a certain date, time shall be of the essence of that said covenant. Performance by USER of each and every covenant of this Agreement is material, the breach of which shall constitute a material breach of this Agreement for which the CITY may terminate this Agreement.

SECTION 22. EFFECT OF WAIVER. The waiver by CITY of any breach of any term, covenant or condition of this Agreement shall not be deemed a waiver of such term, covenant or condition of waiver of any subsequent breach of such term, covenant or condition. The consent or approval by CITY to or of any act by USER requiring CITY's approval or consent shall not be deemed to waive provisions for CITY's approval or consent to any such subsequent acts by USER.

SECTION 23. AUTOMATIC TERMINATION. The right of USER to use the Center described herein shall be automatically terminated without notice on the occurrence of any one of the following conditions subsequent, in which event USER shall forthwith and without demand by the CITY, surrender the Center without delay.

A. The appointment of a receiver to take possession of all or substantially all of the assets of USER;
B. A general assignment by USER for the benefit of creditors;
C. Any action taken or suffered by USER under any insolvency or bankruptcy act;

D. The suspension, revocation or lapse of USER's nonprofit incorporated status; or

E. Failure to comply with any material term of any other agreement between USER and CITY, including without limitation, any grant agreement.

SECTION 24. ELECTIVE TERMINATION. This Agreement may be terminated by either party at any time during the term for any reason, upon giving to the other party at least ninety (90) days written notice of termination. In the event such notice of termination is given, this Agreement shall be deemed terminated ninety (90) days after delivery of notice is given pursuant to Section 28.

Section 25. The parties acknowledge that CITY may terminate this Agreement under this provision without cause, notwithstanding USER's compliance with the terms of this Agreement including payment of utilities, delivery of reports and program services. The Director is authorized to decide, on the part of the CITY, that this Agreement is to be terminated and to furnish written notice thereof to USER.

SECTION 26. TERMINATION UPON DEFAULT. In the event of any default on the part of USER in USER's performance of or compliance with any of the terms, conditions and covenants of this Agreement, CITY shall have the right, in addition to or as an alternative to any other right it may have at law or in equity or pursuant to this Agreement, to terminate this Agreement upon (30) days prior written notice; provided, however, that CITY shall first give written notice to USER of such default and USER shall thereafter have a period of seven (7) days to correct the default.

SECTION 27. SURRENDER ON TERMINATION. On the last day or the sooner termination of the term of this Agreement, USER shall quit and surrender Center in good condition and repair (reasonable use and wear and tear, and damage or deterioration caused by the elements, earthquake, flood, and fire not caused by the negligence of the USER excepted), and remove all property owned by the USER from the Center. All such property not so removed shall be deemed at the option of CITY to have been abandoned by USER.

SECTION 28. NOTICES AND REPRESENTATIVES. All notices required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by U.S. Mail, postage prepaid, addressed as follows:

CITY
Director, Fresno PARCS
Dickey Youth Development Center
1515 E. Divisadero St.
Fresno, CA 93721

USER
Chief Professional Officer, Diane Carbray
Boys and Girls Club of Fresno County
540 N. Augusta St.
Fresno, CA 93701

The parties may change their respective addresses for purposes of delivering notices by sending notice of such change pursuant to this Section.

SECTION 29. CONFLICT OF INTEREST. USER shall avoid all conflict of interest or appearance of conflict of interest in performance of this Agreement. USER is familiar with conflict law provisions set forth in California Government Code Sections 87100 et seq. and Government Code Section 1090. USER certifies that it does not know of any facts which constitute a violation of such section. USER further certifies that it shall not assign any personnel to provide services under this Agreement which would be cause for a violation of any conflict of interest law.

SECTION 30. MISCELLANEOUS PROVISIONS.

A. The parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of California. In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be in Fresno County.

B. The headings of the sections and subsections of this Agreement are inserted for convenience only. They do not constitute a part of this Agreement and shall not be used in its construction.

C. Any and all exhibits which are referred to in this Agreement are incorporated herein by reference and are deemed a part of this Agreement.

D. This Agreement may only be amended by formal written agreement executed by both parties.

E. If a court of competent jurisdiction adjudges any provision of this Agreement as void or unenforceable, the remaining provisions shall not be affected hereby and shall remain in full force and effect.

IN WITNESS WHEREOF, The parties hereby execute this Agreement as of the day and year hereinabove written.

USER:

Boys and Girls Club of Fresno County,
a California Nonprofit Corporation

By _____
Kenneth Quenzer, CPO/President,
Boys and Girls Club of Fresno County

Date 1/30/12

By _____
Will Lyles, Chief Volunteer Officer/Board of Directors
Boys and Girls Club of Fresno County

Date 1/30/12

CITY:

CITY OF FRESNO,
a Municipal Corporation

By _____
Bruce Rudd, Assistant City Manager/ Interim Director
Fresno PARCS

ATTEST:

YVONNE SPENCE, CMC

City Clerk

By_____

APPROVED AS TO FORM:
JAMES C. SANCHEZ

By_____

Exhibit A – Facility Inventory
Exhibit B – Insurance Requirements
Exhibit C – Summary of Reporting Requirements

EXHIBIT A

FACILITY INVENTORY

Fink White Inventory

ITEM	QTY	ITEM	QTY
Pool Tables	2	Monitors	4
Pool Sticks	2	Stove	1
Pool Ball Sets	1	Refrigerator	1
Foosball Table	1	Lab Benches	3
Ping Pong Table	1	Desk	1
Ping Pong Paddles	4	Printer	1
Keyboards	4	8' Tables	3
Hard Drives	4	Chairs	6
Mouse	4		

EXHIBIT B

INSURANCE REQUIREMENTS

Agreement between the City of Fresno and Boys and Girls Club of Fresno County

Lead Operation of Neighborhood Center

Minimum Scope of Insurance
Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations, and contractual liability.

2. The most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, which shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 - Any Auto).

3. Workers' Compensation insurance as required by the California Labor Code and Employer's Liability Insurance.

Minimum Limits of Insurance
USER shall maintain limits of liability of not less than:

1. General Liability:
   - $3,000,000 per occurrence for bodily injury and property damage
   - $1,000,000 per occurrence for personal and advertising injury
   - $3,000,000 aggregate for products and completed operations
   - $3,000,000 general aggregate

2. Automobile Liability:
   - $1,000,000 per accident for bodily injury and property damage

3. Employer's Liability:
   - $1,000,000 each accident for bodily injury
   - $1,000,000 disease each employee
   - $1,000,000 disease policy limit